UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,975	01/16/2001	Roy Frank Brabson	5577-217/RSW920000061US3	4362

58505　7590　02/22/2007	**EXAMINER**	
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BOX IBM		
7019 CORPORATE WAY	ART UNIT	PAPER NUMBER
DAYTON, OH 45459-4238	2154	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
Office Action Summary	09/760,975	BRABSON ET AL.
	Examiner	**Art Unit**	
	Jinsong Hu	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>24 November 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-35</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-35</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-35 are presented for examination. Claims 23, 27, 33 and 35

have been amended.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section
> 122(b), by another filed in the United States before the invention by the applicant for patent or
> (2) a patent granted on an application for patent by another filed in the United States before
> the invention by the applicant for patent, except that an international application filed under
> the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an
> application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 1-7 and 9-35 are rejected under 35 U.S.C. 102(e) as being

anticipated by Sen et al. (US 6,765,909).

4.   As per claims 1-2 and 9-13, Sen teaches the invention as claimed

including a method for providing transactional quality of service [col. 1, lines 15-

20], the method comprising:

providing transaction service level information for a data transmission

transaction to a communication process executing on a data processing system

from an application executing on the data processing system requesting the data

transmission transaction, wherein the transaction service level information is provided separate from data for the content data transmission transaction [col. 3, lines 24-40; col. 4, lines 40-61]; and

determining a quality of service level associated with the data transmission transaction based on the transaction service level information received by the communication process from the application [col. 4, line 62 – col. 5, line 7; col. 6, lines 6-18; col. 7, lines 28-38].

5.   As per claims 3-5, Sen teaches the step of incorporating comprises incorporating quality of service level information into an Internet protocol (IP) header field of data transmissions associated with the data transmission transaction [col. 5, line 66 – col. 6, line 18; col. 6, lines 30-38].

6.   As per claims 6-7, Sen teaches the data transmission associated with the data transmission transaction are data transmission transmitting data provided with a request from the application for the data transmission transaction [col. 4, line 62 – col. 5, line 8].

7.   As per claims 14-16, Sen teaches the steps of determining if a response associated with the data transmission transaction is received by the communication process [col. 7, lines 38-40]; and allocating resources of a data processing system associated with the communication process to process the received response utilizing a quality of service level based on the determined

quality of service of the data transmission transaction established for the data

transmissions associated with the received response [col. 7, lines 41-51].

8.   As per claim 17, Sen teaches the quality of service level utilized to allocate

resources of the data processing system is different from the determined quality

of service [col. 4, lines 26-50].

9.   As per claims 18-20, Sen teaches the step of determining a quality of

service level comprises the steps of determining if the transaction service level

includes an identification of a predefined quality of service level [col. 6, line 66 –

col. 6, line 6]; and utilizing the predefined quality of service level as the

determined quality of service level if the transaction service level includes an

identification of the predefined quality of service level [col. 6, lines 30-38].

10.   As per claims 21 and 22, Sen teaches the communication process

comprises a TCP/IP kernel and a communication protocol stack [col. 2, lines 48-

57].

11.   As per claims 23-26, Sen teaches the invention as claimed including a

method for establishing a quality of service level for the transmission of data,

comprising:

        providing an application program interface to a communications process

which both receives content data from at least one application to be transmitted

by the communication process and receives quality of service information

associated with the content data to be transmitted so as to establish the quality of

service level for the transmission of the received data without reference to the

contents of the received content data to be transmitted [col. 3, lines 24-40; col. 4,

line 40 – col. 5, line 7; col. 6, lines 6-18; col. 7, lines 28-38].

12.   As per claims 27-31, since they are system claims of claims 1, 14, 19 and

21-22, they are rejected for the same basis as claims 1, 14, 19 and 21-22 above.

13.   As per claims 32 and 34, since they are apparatus and computer program

claims of claim 1, they are rejected for the same basis as claim 1 above.

14.   As per claims 33 and 35, since they are system and computer program

claims of claim 23, they are rejected for the same basis as claim 23 above.

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described
> as set forth in section 102 of this title, if the differences between the subject matter sought to
> be patented and the prior art are such that the subject matter as a whole would have been
> obvious at the time the invention was made to a person having ordinary skill in the art to which
> said subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

16.   Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Sen et al. (US 6,765,909) as applied to claims 1-7 and 9-35 above, in view of

Official Action.

17.   As per claim 8, Sen teaches the invention substantially as claimed in claim

1. Sen does not specifically teach the data for the data transmission transaction

being encrypted. However, "Official Notice" is taken that both the concept and

advantages of providing for data encryption is well known and expected in the

art. It would have been obvious to a person of ordinary skill in the art to add

encryption function in Sen's system because doing so would increase the secure

level of the system.

Conclusion

18.   Applicant's arguments with respect to claims have been considered but

are not persuasive.

19.   In the remarks, applicant argued in substance that

        (1) Sen does not disclose application or communication process of a data

process system;

        (2) Sen's "application" is different from the "application" in the claim;

        (3) Sen does not teach provide transaction service level from an

application to a communication process;

(4) Sen doe not teach the QoS level is based on transaction service level

information received from an application;

(5) Sen fails to differentiate different type of web-based transactions that

require different service level;

(6) Sen does not teache application program interface;

(7) Sen does not teach a send message application interface.

20.   Examiner respectfully traverses applicant's remarks:

As to points (1) and (2), applicant fails to consider the teaching of Sen for

providing Quality of Service to clients within a communication network [col. 1,

lines 15-35; col. 2, lines 13-21]. Sen also discloses that the Quality of Service is a

set of requirements and related service performance that determines a specifies

degree of performance by an application utilized by a user [col. 1, lines 64-67],

the service [i.e., application] includes file transaction, web browsing, email, etc.,

i.e., the system not only includes "users" as applicant argued in the remarks, it

also includes service provider or communication process system, and the service

provider or communication process system provides requested service or

application to users based on QoS level. Furthermore, applicant does not point

out the special meaning or type of the application in the claims. Based upon

Newton's Telecom Dictionary, application is a software program that carries out

some useful task, in the other words, the application in Sen's system is the same

as the application in the claims because both of them are QoS applications.

Thus, Sen does teach application or communication process of a data process

system.

As to points (3) and (4), Sen discloses that service provider or

communication process system acknowledging the QoS level from the request

first, i.e., users' request indicates the type of service or application, and the

service or application determines QoS transaction level, and then providing

related service to users [col. 1, lines 15-35; col. 2, lines 42-57; col. 3, lines 34-37;

col. 4, lines 26-39]. Furthermore, there is no any language, in col. 5, lines 42 –

col. 5, line 38 of Sen's reference, directs the QoS being specifically not

determined based upon transaction service level data. In the contrast, Sen

discloses the classifier in the system maintaining a table of pre-determined

numbers and the application associated with each connection number, i.e., once

the classifier identify a connection number of an application, the classifier will

know the QoS level of this application, and this is also the reason of checking the

header of each transaction packet. Thus, Sen does teach the limitations in the

claims.

As to point (5), there is no any language in the claims directs to

differentiate different type of web-based transactions that require different service

level. Furthermore, Sen discloses the step of differentiating services within the

system [col. 13-21], which the services include Web browsing [col. 2, lines 46-

51]. Thus, Sen does teach the limitations in the claims.

As to points (6) and (7), applicant fails to consider the teaching of Sen for

providing Quality of Service to clients within a communication network [col. 1,

lines 15-35; col. 2, lines 13-21], the service [i.e., application] includes file

transaction, web browsing, email, etc. It is obvious to a person with ordinary skill

in the art that a communication system must have program or message interface

for handling the interaction between two communication parties. Thus, Sen does

teach the limitations in the claims.

Accordingly, Sen is still a relevant prior art reference.

21.   **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

22.   A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

23.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Jinsong Hu whose telephone number is (571)

272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

February 16, 2007